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SERVICE DATE – OCTOBER 28, 2005

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-55 (Sub-No. 625X)

CSX TRANSPORTATION, INC.–ABANDONMENT EXEMPTION–
IN PRESTON COUNTY, WV

Decided: October 27, 2005

By decision and notice of interim trail use or abandonment (NITU) served on April 9, 2004 (April 2004 decision), the Board, under 49 U.S.C. 10502, exempted from the prior approval requirements of 49 U.S.C. 10903 the abandonment by CSX Transportation, Inc. (CSXT) of a 14.3-mile line of railroad extending from milepost BAJ 0.0 at Rowlesburg to milepost BAJ 14.3 near Albright in Preston County, WV, subject to trail use, public use, environmental, and standard employee protective conditions.

The April 2004 decision authorized Friends of the Cheat (Friends) to negotiate with CSXT for interim trail use/rail banking until October 6, 2004, for the 14.3-mile line under the National Trails System Act, 16 U.S.C. 1247(d) (Trails Act). By decision served on October 13, 2004, the NITU negotiating period was extended until April 6, 2005, and the time for CSXT to file its notice of consummation was extended until June 6, 2005. After the extension of the NITU negotiating period, CSXT and Friends could not reach an agreement. CSXT subsequently submitted a notice of consummation to the Board on June 3, 2005.

By letter filed on October 12, 2005, CSXT states that it inadvertently sent the notice of consummation in this proceeding to the Board before CSXT had complied with all of the conditions imposed in the April 2004 decision. CSXT points out that, among other conditions that were imposed, CSXT was required to retain its interest in and take no steps to alter the historic integrity of all sites and structures on the right-of-way that are 50 years old or older until completion of the section 106 process of the National Historic Preservation Act, 16 U.S.C. 470f (NHPA). CSXT states that, although it had discontinued service, canceled tariffs and salvaged track and materials on the line, it had not complied with the historic preservation condition prior to inadvertently filing the notice of consummation and had not removed the bridges on the line. CSXT indicates that it has complied with all other conditions.

CSXT states that it intends to comply with the historic condition, and in order to do so, CSXT seeks to retract the consummation letter and requests that the Board indicate that the abandonment has not been consummated. The Board's regulations at 49 CFR 1152.29(e)(2) require the filing of a notice of consummation within 1 year from the service date of the decision

authorizing abandonment, but only if there are no legal or regulatory barriers to consummation. The existence of an environmental condition that has not been satisfied, such as the historic preservation condition present here, constitutes such a barrier. In that case, the Board's regulations provide that the time to consummate the abandonment and file a notice of consummation extends until 60 days after the satisfaction, expiration, or removal of the condition. Because CSXT has not satisfied the historic preservation condition, CSXT is precluded from fully abandoning the line at this time. Accordingly, CSXT's request to retract the consummation letter is granted, and the line remains subject to the Board's jurisdiction.

This decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. CSXT's request to retract the consummation letter is granted, and the line remains subject to the Board's jurisdiction.
2. This decision is effective on its date of service.

By the Board, Joseph H. Dettmar, Acting Director, Office of Proceedings.

Vernon A. Williams
Secretary